

## CHILD AND FAMILY SERVICES AGENCY

NOTICE OF EMERGENCY RULEMAKING

The Director of the Child and Family Services Agency ("CFSA"), acting pursuant to section 2(o) of the Child and Family Services Agency Establishment Amendment Act of 2000, effective April 4, 2001, D.C. Law 13-277, D.C. Official Code § 4-1303.03 (2006 Supp); section 106 of the Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006, D.C. Law 16-69; Mayor's Order 2006-38, dated March 20, 2006; and section 3 of the Safe and Stable Homes for Children and Youth Amendment Act of 2007, D.C. Law 17-21, effective September 21, 2007 hereby gives notice of her intent to amend Chapter 68 of Title 29 DCMR, "Grandparent Caregivers Pilot Program Subsidies" on an emergency basis.

The emergency action is based upon an immediate need in the District of Columbia for grandparents to receive subsidies in order to care for and to protect the safety and welfare of their grandchildren. The emergency rules were adopted and became effective on July 20, 2008. They will remain in effect for 120 days from the date of adoption.

*29 DCMR § 6802.1 is amended as follows:*

*Paragraph (b) is amended to read as follows:*

(b) The applicant is the grandparent, great-grandparent, great-aunt, or great uncle of the child or was the grandparent, great-grandparent, great-aunt, or great-uncle of the child prior to adopting the child.

*Paragraph (c) is amended to read as follows:*

(c) The applicant has been the child's primary caregiver for at least the previous six (6) months;

*Paragraph (e) is amended to read as follows:*

(e) The child's parent has not resided in the applicant's home for at least the most recent six (6) continuous months; provided that a parent may reside in the home without disqualifying the applicant from receiving a subsidy if:

- (1) The parent has designated the applicant to be the child's standby guardian pursuant to Chapter 48 of Title 16 of the D.C. Official Code;
- (2) The parent is a minor enrolled in school; or
- (3) The parent is a minor with a medically verifiable disability that prevents him or her from caring for the child;

*Paragraph (f) is amended by striking “§ 6804” and substituting “§ 6805” in its place.*

*Paragraph (g) is amended by striking “§ 6804” and substituting “§ 6805” in its place.*

*Paragraph (k) is amended by striking “§ 6806” and substituting “§ 6807” in its place.*

*A new paragraph (l) is added to read as follows:*

(l) The applicant is not currently receiving a guardianship or adoption subsidy for the child.

*29 DCMR § 6803.2 is amended as follows:*

*Paragraph (a) is amended to read as follows:*

(a) The application form, which shall include a signed statement, sworn under penalty of perjury, that all information provided in the application packet is true and accurate to the best belief of the applicant;

*Paragraph (c) is amended to read as follows:*

(c) Proof that the applicant is the primary caregiver as provided in § 6804;

*Paragraph (h) is amended to read as follows:*

(h) Proof that the child’s parent has not resided in the applicant’s home for at least the most recent six (6) months or proof of the following:

- (1) The parent has designated the applicant to be the child’s standby guardian pursuant to Chapter 48 of Title 16 of the D.C. Official Code;
- (2) The parent is a minor enrolled in school; or
- (3) The parent is a minor with a medically verifiable disability that prevents him or her from caring for the child;

*29 DCMR § 6803.5 is amended as follows:*

*A new § 6803.5 is added to read as follows:*

6803.5 Any statement under this section made with knowledge that the information set forth therein is false shall be subject to prosecution as a false statement under D.C. Official Code § 22-2405(a) and punishable by a fine of not more than \$1,000 or imprisonment for not more than 180 days, or both.

*29 DCMR §§ 6804 through § 6809 are renumbered as §§ 6805 through § 6810 and a new section § 6804 is added to read as follows:*

**6804 DOCUMENTATION OF STATUS AS PRIMARY CAREGIVER**

6804.1 The applicant shall demonstrate that he or she is the primary caretaker of the child by providing at least one of the following documents:

- (a) A court order granting custody of the child to the applicant;
- (b) A court order granting the applicant standby guardianship of the child, pursuant to D.C. Official Code §§ 16-4801 – 4810; or
- (c) A decree stating that the applicant has adopted the child.

6804.2 If the applicant is unable to provide any of the documents listed in 29 DCMR § 6804.1(a) through (c), the applicant may demonstrate that he or she has been the primary caretaker of the child by providing documentation required in § 6804.3 and at least one of the following documents:

- (a) Records showing that the applicant enrolled the child in school the current or previous school year or is the primary educational contact for the child;
- (b) Immunization or medical records indicating that the applicant is tending to the medical needs of the child. The records provided must be no older than two years old;
- (c) Proof that the applicant has received either Supplemental Security Income or TANF for the child; or
- (d) A letter from any legal, medical, military, law enforcement, social service or similar professional, or the applicant's landlord describing the applicant's status relevant to the child.

6804.3 If the Applicant is establishing eligibility under § 6804.2, the applicant shall provide a signed, written statement that he or she has become the primary caregiver of the child because both parents are unable to fulfill the duties of a primary caretaker due to at least one of the following situations:

- (a) Death;
- (b) Incarceration;
- (c) Lack of Involvement or Abandonment or Voluntary relinquishment of physical custody;

- (d) Separation due to abuse or neglect;
- (e) Active military assignment; or
- (f) Serious illness.

6804.4 The Agency reserves the right to request a home visit if probable cause exists to suspect the documents being provided are fraudulent or that the applicant has misrepresented himself or herself for the purpose of receiving the subsidy.

6804.5 If a home visit is requested, the applicant will be informed that:

- (a) The Agency representative visiting the home is a mandated reporter of child abuse or neglect and that any evidence of abuse or neglect will be reported to the child abuse hotline;
- (b) Any substantiated fraud will be reported to the Office of the Inspector General;
- (c) Upon completion of the home visit, the Agency representative will complete a report stating whether the suspicion of fraud is substantiated by a preponderance of the evidence known to the Agency;
- (d) If the suspicion is not so substantiated, the suspicion may not affect the Agency's decision regarding the application;
- (e) If the suspicion is so substantiated, the Agency may deny the application;
- (f) If the applicant does not submit to a home visit, the Agency may deny the application; and
- (g) The applicant may withdraw their application without repercussion at any time.

*§ 6805.6 is amended by striking the phrase "§ 6804.4 or 6804.5" and substituting "§ 6805.4 or 6805.5" in its place.*

*Amend § 6806.1 as follows:*

6806.1        The amount of the subsidy an applicant is eligible to receive shall be within five percent (5%) (no less than 95% and no more than 105%) of the regular daily rate of the subsidy for a long-term permanent Level 1 guardianship subsidy pursuant to Title 29 DCMR Chapter 61, less any TANF or Supplemental Security Income (SSI) benefits received for the child.

*§ 6806.2 is amended by striking “§ 6807” and substituting “§ 6808” in its place.*

*§ 6807.3(b) is amended by striking “§ 6807” and substituting “§ 6808” in its place.*

*§ 6807.3(d) is amended by striking “§ 6807” and substituting “§ 6808” in its place.*

*§ 6807.5(b) is amended by striking “§ 6806.4” and substituting “§ 6807.4” in its place.*

*§ 6808.4(a) is amended to read as follows:*

- (a) A signed statement, sworn under penalty of perjury, that all information provided to establish continued eligibility is true and accurate to the best belief of the recipient and that there has been no material change in circumstance since the recipient was initially determined to be eligible for a subsidy;

*§ 6808.4(b) is amended to read as follows:*

6808.4(b)        Updated criminal background check every two years from the date of the initial application;

*§ 6808.4(c) is amended to read as follows:*

6808.4(c)        Updated child protection register checks; and

*§ 6809.1 is amended by striking “§ 6808.2” and substituting “§ 6809.2” in its place.*

*Amend § 6899 (Definitions) as follows:*

The definition of “Child” is amended as follows: An individual who is under eighteen (18) years of age and who is or prior to being adopted by applicant was the grandchild, grand-nephew or grand-niece, as appropriate, of the applicant or recipient.

The definition of “Crime against a Child” is amended as follows:

“Crime against a Child” – A criminal offense which is comparable to:

- (a) Kidnapping of a child, except by a parent;
- (b) False imprisonment of a child, except by a parent;
- (c) Criminal sexual conduct toward a child;
- (d) Solicitation of a child to engage in sexual conduct;
- (e) Use of a child in a sexual performance;
- (f) Solicitation of a child to practice prostitution;
- (g) Any conduct that by its nature is a sexual offense against a child; or
- (h) Production or distribution of child pornography.

The following definition of "Minor" is amended as follows:

"Minor" – An individual who is under twenty-one (21) years of age.

**DEPARTMENT OF HEALTH****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of an amendment to section 929 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Supported Employment Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Supported Employment Services, a habilitative service provided to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which was approved the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published on April 4, 2008 (55 DCR 003502). Comments were received and considered. This rulemaking amends the April 4<sup>th</sup> rules by reducing the work experience requirements from three years to one year for an employment specialist with a four year college degree. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of supported employment services.

The emergency rulemaking was adopted on June 17, 2008 and became effective on that date. The emergency rules will remain in effect for 120 days or until October 14, 2008, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Section 929 (Supported Employment Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

**929 SUPPORTED EMPLOYMENT SERVICES**

929.1 Supported employment services shall be reimbursed by the District of Columbia Medicaid Program for each participant in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

- 929.2 Supported employment is intended for individuals for whom competitive employment has not traditionally occurred or has been interrupted. The aim of supported employment services is to emphasize the assets, preferences and skills of the person and to match the person to a job that maximizes those assets and minimizes deficits.
- 929.3 Supported employment shall consist of paid competitive work that offers ongoing support services in an integrated work setting where wages are paid at or above minimum, consistent with the Fair Labor Standards Act. The level of employment participation may be full-time or part-time based on the interests and abilities of the individual.
- 929.4 Supported employment services eligible for reimbursement shall be as follows:
- (a) Intake and assessment;
  - (b) Job placement;
  - (c) Job training and support; and
  - (d) Follow-along services.
- 929.5 Supported employment services are ineligible for reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.*) or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.*) (hereinafter the “Acts”). Each person receiving supported employment services shall submit documentation that demonstrates that services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her record and individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care. Court-ordered vocational assessment shall be provided by authorizing intake and assessment services under this section if services provided through programs funded under Title I of the Rehabilitation Act of 1973 cannot provide assessment services in the timeframe set forth in the Court’s Order.
- 929.6 Professionals authorized to provide supported employment activities without supervision are as follows:
- (a) Vocational Rehabilitation Counselor;
  - (b) A person with a Master’s degree and a minimum of one (1) year of experience working with persons with intellectual and developmental disabilities;
  - (c) A person with a bachelors degree and two years of experience working in supported employment; or
  - (d) A Rehabilitation Specialist.



929.7 Paraprofessionals authorized to perform supported employment activities under the supervision of a professional listed in section 929.6 are as follows:

- (a) Job Coaches; or
- (b) Employment Specialists.

Supervision is not intended to mean that the paraprofessional performs supported employment activities in view of the professional authorized in section 929.6, but rather that the paraprofessional has a supervisor who meets those qualifications.

929.8 Intake and assessment activities include, but are not limited to, the following:

- (a) Conducting an individualized vocational and situational assessment;
- (b) Developing an individualized employment plan that includes the person's job preferences and desires;
- (c) Assessing person-centered employment information, including the employee's interest in doing the job, transportation to and from work, family support, and financial issues;
- (d) Counseling an interested person on the tasks necessary to start a business; and
- (e) Providing individual and/or group employment counseling.

929.9 As a result of intake and assessment activities, the provider shall complete and deliver a comprehensive vocational assessment report to the Department on Disability Services (DDS) Service Coordinator that includes the following:

- (a) Employment-related strengths and weaknesses (*e.g.*, task focus);
- (b) Available family and community supports;
- (c) Personal concerns;
- (d) Accommodations and supports that may be required on the job; and
- (e) If a specific job or entrepreneurial effort has been targeted the assessment may also include:
  - (1) Individualized training needed to acquire and maintain acceptable production skills;
  - (2) Anticipated level of interventions that will be required by the job coach;
  - (3) Type of integrated work environment in which the person can potentially succeed; and
  - (4) If the individual is not immediately employable, activities and supports that are need to improve potential for employment.

929.10 Intake and assessment activities shall be billed at the unit rate. This service shall not exceed three hundred twenty (320) units annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The

reimbursement rate is forty-three dollars (\$43.00) per hour if performed by a professional listed in section 929.6. The reimbursement rate is twenty-five dollars and thirty cents (\$25.30) per hour if performed by a paraprofessional under the supervision of a professional listed in section 929.7. If extended intake and assessment services are required, the provider shall submit a written justification to the DDS Service Coordinator and the DDA Waiver Office a minimum of ten (10) business days before the prior authorized services have been expended. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Services shall continue if DDS does not respond to the written request within ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights through the Department of Health's Medical Assistance Administration (MAA). The disposition also shall be documented in the person's IHP or ISP and Plan of Care. Intake and assessment shall be prior authorized by DDS as a discrete service and no other supported employment services will be approved without the development and delivery of the completed vocational assessment to the DDS Service Coordinator.

- 929.11 Job placement activities eligible for reimbursement include, but are not limited to, the following:
- (a) Conducting workshops or other activities designed to assist the person in completing employment applications or preparing for interviews;
  - (b) Conducting workshops or other activities to instruct persons on proper work attire, behaviors and expectations;
  - (c) Completing job applications with or on behalf of the person;
  - (d) Assisting the person with job exploration and placement, including assessing opportunities for advancement;
  - (e) Visiting employment sites and attending employment networking events;
  - (f) Making telephone calls to prospective employers, utilizing the internet, magazines, newspapers and other publications as leads;
  - (g) Collecting descriptive data regarding various types of employment opportunities, for purposes of preparing a standardized set of requirements for prospective employees;
  - (h) Negotiating employment terms with or on behalf of the person;
  - (i) Working with the person to develop and implement a plan to start a business, including developing a business plan, developing investors or start up capital, and other tasks necessary to starting a small business; and
  - (j) Working with interested persons and employers to develop group placements.
- 929.12 Job placement activities shall be billed at the unit rate. This service shall not exceed four hundred (400) units annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous

minutes of service to bill for one (1) unit of service. The reimbursement rate is forty-three dollars (\$43.00) per hour when performed by a professional listed in section 929.6. The reimbursement rate is twenty-five dollars and thirty cents (\$25.30) per hour if performed by a paraprofessional under the supervision of a professional listed in section 929.7. If extended job placement services are required, the provider shall submit a written justification in support of the extended services to the DDS Service Coordinator and the DDA Waiver Office a minimum of ten (10) business days before the prior authorized services have been expended. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Services shall continue if DDS does not respond to the written request within ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights through MAA. The disposition shall be documented in the person's IHP or ISP and Plan of Care.

929.13 Job training and support activities are those activities designed to assist and support the person after employment has been obtained. The expectation is that the job training and support activities are faded as the individual gains job skills, and support from the existing work structure is increasingly sufficient to maintain employment. Job training and support activities eligible for reimbursement include, but are not limited to, the following:

- (a) On-the-job training in work and work-related skills required to perform on the job;
- (b) Work site support that is intervention-oriented and designed to enhance work performance, modify inappropriate behaviors, re-training as jobs change, ongoing counseling, and assistance to ensure job retention;
- (c) Supervision and monitoring of the person in the workplace;
- (d) Training in related skills essential to obtaining and maintaining employment, such as the effective use of community resources, break or lunch rooms, transportation systems, mobility training and changing jobs.
- (e) Monitoring and providing information and assistance regarding wage and hour requirements, appropriateness of placement, integration, number of hours worked, need for adaptations and offsite supports such as transportation services;
- (f) Consulting with other professionals and the person's family, as necessary; and
- (g) Consulting with the person's employer, co-workers or supervisors, as necessary.

929.14 Job training and support activities shall not exceed one thousand, two hundred and eighty (1280) units per Plan of Care year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The

reimbursement rate is forty-three dollars (\$43.00) per hour when performed by a professional listed in section 929.6. The reimbursement rate is twenty-five dollars and thirty cents (\$25.30) per hour if performed by a paraprofessional under the supervision of a professional listed in section 929.7. If extended job training and support activities are required the provider shall submit a written justification in support of the extended services to the DDS Service Coordinator for review. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Services shall continue if DDS does not respond to the written request within ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights through MAA. The disposition also shall be documented in the person's IHP or ISP and Plan of Care.

929.15 Long-term follow-along activities eligible for reimbursement include, but are not limited to, the following:

- (a) Periodic monitoring of job stability;
- (b) Interventions to address issues that threaten job stability;
- (c) Providing retraining or cross training when job duties change;
- (d) Facilitating integration and natural supports at the job site; and
- (e) Facilitating job advancement and job mobility.

929.16 Follow-along activities shall be reimbursed at the same rates as set forth in section 929.14 and shall not exceed seven hundred and sixty-eight (768) units per Plan of Care year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. If extended follow-along services are required, the provider shall submit a written justification to the DDS Service Coordinator and the DDA Waiver Office a minimum of ten (10) business days before the prior authorized services have been expended. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Services shall continue if DDS does not respond to the written request with ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights through MAA. The disposition also shall be documented in the person's IHP or ISP and Plan of Care.

929.17 The three models of supported employment eligible for reimbursement shall be as follows:

- (a) Individual job support;
- (b) Group supported employment; and
- (c) Entrepreneurial.

929.18 Group supported employment services are delivered when there is more than one (1) person at the job site who is receiving supported employment services

from the supported employment services provider. The job coach shall provide training and other services as described in 929.13 to each Waiver participant as needed. The rate for this service is sixteen dollars and forty cents per hour (\$16.40) billable in fifteen (15) minute units of four dollars and ten cents (\$4.10). The provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. This rate assumes a maximum of four (4) persons are receiving support in the same job location, and are receiving job coaching services from one (1) supported employment services staff person. Each Waiver participant may be billed for the time the job coach is supporting any of the four (4) participants.

- 929.19 Each provider shall provide the ongoing supports at the work site needed for the person to obtain job stability after employment has been obtained. Once the person is stable on the job, the provider shall make a minimum of two (2) job site contacts per month for the purpose of monitoring job stability.
- 929.20 Reimbursement for supported employment services provided at the work site in which persons without disabilities are employed shall only be made for adaptations, supervision and training required by the person who receives Waiver services pursuant to these rules. No payment shall be made for supervisory activities, which are rendered as a normal part of the business setting.
- 929.21 When applicable, each provider shall be certified by the U.S. Department of Labor.
- 929.22 When applicable, each provider shall coordinate with DDS/DDA and the employer for the provision of appropriate services for each person requiring physical assistance to accomplish basic activities of daily living on the work site.
- 929.23 When applicable, each provider shall coordinate with the employer to ensure that each person has access to appropriate first aid on the work site.
- 929.24 Supported employment services shall be pre-authorized and provided in accordance with each person's IHP or ISP and Plan of Care.
- 929.25 Each provider shall develop a plan that addresses how the provider will meet the needs and communicate with non-English speaking persons.
- 929.26 Each provider of supported employment services shall be a social services agency as described in Chapter 19 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), Section 1903.1. In addition, the provider agrees to:
- (a) Be a member of the person's interdisciplinary team;

- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Supported Employment Services under the Waiver; and
  - (c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS for each person.
- 929.27 Each person providing supported employment services for a provider under section 929.26 shall meet the requirements in Chapter 19 to Title 29 of the District of Columbia Municipal Regulations (DCMR), section 1911.
- 929.28 Supported employment services may be provided either exclusively as the vocational service or in combination with prevocational or day habilitation services. Supported employment services shall not be provided concurrently with day treatment, day habilitation or prevocational services.
- 929.29 Supported employment services shall be provided for a maximum of eight (8) hours in a day and five (5) days in a week. The provider shall submit a written justification in support of the extended services to the DDS Service Coordinator for review. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Any disapproval shall be accompanied by notice of Fair Hearing Rights through MAA. The disposition shall be documented in the person's IHP or ISP and Plan of Care.
- 929.30 Supported employment services providers shall not bill for incentive payments, subsidies or unrelated vocational training expenses such as the following:
  - (a) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment services program;
  - (b) Payments that are passed through to users of supported employment services programs; or
  - (c) Payments for vocational training that is not directly related to the person's supported employment services program.
- 929.31 Each supported employment services provider shall maintain service records that accurately and adequately link the services billed to the IHP or ISP and Plan of Care for each participant receiving services, including:
  - (a) Person's name;
  - (b) Staff person's name;
  - (c) Date(s) of activities;
  - (d) Start and end times of activities;
  - (e) Purpose of activities; and
  - (f) Location of activities.

- 929.32 Each supported employment services provider shall record and report:
- (a) Occurrences or behaviors by a participant that impede the progress of the group or the individual participant;
  - (b) Any unusual circumstances or events that impact the stability of the group or the individual participant;
  - (c) Any individual unusual incidents; and
  - (d) Actions taken to address behaviors or unusual circumstances.
- 929.33 Supported employment services providers shall submit to the DDS Service Coordinator a completed quarterly update of the IHP or ISP. The report shall include:
- (a) Name of the each person;
  - (b) Confirmation that wages exceed minimum wage;
  - (c) Average hours a week worked by each person;
  - (d) Hours of activities for each person if not engaged in employment; and
  - (e) Aggregate calculation of wages earned, hours worked and hours of activities for persons not engaged in employment.
- 929.34 Each supported employment services provider shall maintain a copy of each person's record at least six (6) years after the date of discharge.
- 929.35 Time spent in transportation to and from the program shall not be included in the total amount of services provided per day. However, time spent in transportation to and from the program for the purpose of training the participant on the use of transportation services may be included in the number of hours of services provided per day for a period of time specified in the person's IHP or ISP and Plan of Care.

**929.99 DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

**Employment Specialist** – A person with a four-year college degree and a minimum of one (1) year of experience in a supported employment program; a person with a college degree and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or a person with a high school degree and three (3) years of experience in a supported employment program.

**Entrepreneurial** – Development and on-going support for micro-enterprises owned and operated by the participant. This assistance consists of: (a) assisting the participant to identify potential business opportunities; (b) assisting the participant in the development of a business and launching a business; (c) identification of the

supports that are necessary in order for the participant to operate the business; and (d) ongoing assistance, counseling and guidance once the business has been launched.

**Group** – An employment situation in competitive employment in which a group of four or fewer participants with disabilities are working at a particular work setting. The participants may be disbursed throughout the company and among workers without disabilities or congregated as a group in one part of the business.

**Individual Habilitation Plan (IHP)** – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

**Individual Supported Employment** – A supported employment strategy in which a job coach places a participant into competitive employment through a job discovery process, provides training and support, and then gradually reduces time and assistance at the work site.

**Individual Support Plan (ISP)** – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

**Intake** – A process designed to obtain information about the person and their needs as it relates to community integration and employment.

**Integrated Work Setting** – A work setting that provides daily contact with other employees and/or the general public.

**Job Coach** – A person with a four-year college degree and a minimum of one (1) year of experience in a supported employment program; a person with a college degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or a person with a high school degree and three (3) years of experience in a supported employment program.

**Long-term follow along activities** – Ongoing support services necessary to assure job retention.

**Person or Participant** – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

**Plan of Care** – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.



**Provider** – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

**Waiver** – The Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

**Rehabilitation Specialist** – A persons with a Master's degree in Rehabilitation Counseling or a similar degree from an accredited university; a person with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program; or a person with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

**Situational Assessment** – A type of assessment that provides the person an opportunity to explore job tasks in real work environments in the community. This assessment is useful in identifying the type of employment that may be beneficial to the person and the support required by each person to succeed in the work environment. Provides competitive or real work sites in the community for the systemic assessment and observation of the person; identifies work site characteristics and person adaptations, training procedures, support needs related to the person's success in supported employment; and recommends specific plans for further services, including the appropriateness of continuing supported employment.

**Vocational Assessment** – An assessment designed to assist persons, their family and service providers with specific employment related data that will generate positive employment outcomes. The assessment outlines the life, relationships, challenges, and perceptions of the person as they relate to potential sources of community support and mentorship.

**Vocational Rehabilitation Counselor** – A persons with a Master's degree in Vocational Counsel Counseling, Vocational Rehabilitation Counseling or a similar degree from an accredited university; a person with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program; or, a person with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5<sup>th</sup> Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

## DEPARTMENT OF HEALTH

## NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of an amendment to section 993 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Independent Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for independent habilitation services, which is renamed Supported Living Services, and is provided by qualified professionals to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which was approved the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 4, 2008 (55 DCR 003528). Comments were received and considered. This rulemaking amends the April 4<sup>th</sup> rules by requiring each supported living provider to be certified by the Department on Disability Services and establishing requirements for the notice that is issued when services are terminated by a provider. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of supported living services.

The emergency rulemaking was adopted on June 23, 2008, and became effective on that date. The emergency rules will remain in effect for 120 days or until October 20, 2008, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Section 993 (Independent Habilitation Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

**993 SUPPORTED LIVING SERVICES**

993.1 Supported living services shall be reimbursed by the District of Columbia Medicaid Program for each participant in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

- 993.2 In order to qualify for reimbursement under this section, supported living services shall be delivered in a Supported Living Residence (SLR) that can serve one (1) to three (3) persons and the number of persons in the home shall not exceed the number of bedrooms in that home. The SLR must be owned, leased or otherwise operated by the Supported Living Provider. The SLR shall meet the certification standards developed by the Department on Disability Services (DDS) as set forth in the Human Care Agreement between DDS and the SLR or be licensed or similarly certified in other states.
- 993.3 Each home located out-of-state shall be licensed and/or certified in accordance with the host state's laws and regulations and/or consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state. Each out-of-state provider shall comply with the following additional requirements:
- (a) Remain in good standing in the jurisdiction where the program is located;
  - (b) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action, if applicable, to DDS;
  - (c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews; and
  - (d) Be certified by DDS as a qualified provider of supported living services.
- 993.4 Supported living services shall be available only to a person with a demonstrated need for training, assistance and supervision, and shall be authorized and provided in accordance with the person's current Individual Habilitation Plan (IHP) or Individual Support Plan (ISP) and Plan of Care.
- 993.5 Each provider of supported living services shall assist participants in the acquisition, retention, and improvement of skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social and adaptive skills necessary to enable the person to reside in the community. To accomplish these goals, the provider shall:
- (a) Use observation, conversation, and other interactions as necessary to develop a functional analysis of the person's capabilities within the person's first month of service;
  - (b) Prepare a support plan with measurable outcomes using the functional analysis, the IHP or ISP and Plan of Care, and other information available to develop and maintain as appropriate the skills necessary to enable the person to reside in the community while maintaining the person's health and safety; and

- (c) Prepare a data-based quarterly report for distribution to the person, family, guardian, and DDS Case Manager on the activities and support provided to help the person to achieve his/her identified outcomes and his/her progress to date.

993.6 Each provider of supported living services shall ensure that participants receive hands-on support, habilitation, and other supports, when appropriate, which shall include, but not be limited to, the following areas:

- (a) Eating and drinking;
- (b) Toileting;
- (c) Personal hygiene;
- (d) Dressing;
- (e) Grooming;
- (f) Monitoring health and physical condition and assistance with medication or other medical needs;
- (g) Communication;
- (h) Interpersonal and social skills;
- (i) Home management;
- (j) Mobility;
- (k) Time management;
- (l) Financial management;
- (m) Academic and pre-academic skills, other than those prescribed by the Individuals with Disabilities in Education Act;
- (n) Motor and perceptual skills;
- (o) Problem-solving and decision-making;
- (p) Human sexuality;
- (q) Aesthetic appreciation; and
- (r) Opportunity for social, recreational, and religious activities utilizing community resources.

993.7 Each provider of supported living services shall ensure that each participant receives the professional/medical services required to meet his or her goals as identified in the person's IHP or ISP and Plan of Care, through the support of the SLR provider to coordinate and ensure receipt of the professional/medical services. Professional/medical services may include, but are not limited to, the following disciplines or services:

- (a) Medicine;
- (b) Dentistry;
- (c) Education;
- (d) Nutrition;
- (e) Nursing;
- (f) Occupational therapy;
- (g) Physical therapy;
- (h) Psychology;

- (i) Social work;
- (j) Speech, hearing and language therapy; and
- (k) Recreation.

993.8 Each provider of supported living services shall provide or ensure the provision of transportation services to enable the persons to gain access to Waiver and other community services and activities. If transportation services are provided by the SLR, the provider shall meet the requirements governing transportation services set forth in section 1903 of Title 29 DCMR.

993.9 Each provider of supported living services shall be a social services agency as described in Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), Section 1903.1. In addition, the provider shall:

- (a) Be a member of the person's interdisciplinary team;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Supported Living Services under the Waiver;
- (c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS for each person;
- (d) Have a current Human Care Agreement with DDS for the provision of residential services;
- (e) Ensure that all supported living services staff are qualified and properly supervised pursuant to all applicable rules;
- (f) Ensure that all providers have a plan to provide staff interpreters for non-English speaking persons;
- (g) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care;
- (h) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
- (i) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention;
- (j) Ensure compliance with DDS policies governing reporting of unusual incidents, human rights, behavior management, and protection of person's funds;
- (k) Ensure that each SLR, to the extent necessary, is accessible to public transportation and emergency vehicles;
- (l) Ensure that each SLR, to the extent necessary, is handicapped accessible and barrier-free;
- (m) Provide a written staffing schedule for each location where services are provided;
- (n) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of

2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).

- (o) Provide DDS and the Department of Health's Medical Assistance Administration with at least ninety (90) days advance written notice of intent to terminate supported living services; and
- (p) Provide persons receiving supported living services with at least thirty (30) days advance written notice prior to the effective date of the termination of services in the form prescribed by DDS and be responsible for notifying DDS of those persons who are undergoing treatment of an acute condition. The written notice shall be provided to the person, the guardian (if applicable), the attorney (if applicable), the family and the DDS Service Coordinator. Notice to the person shall be delivered in a manner consistent with the person's primary means of communication that is understood by the person. The written notice shall include all of the following:
  - (1) The name of the person for whom supported living services are being terminated;
  - (2) The address of the person for whom supported living services are being terminated;
  - (3) The proposed last date of service to be provided;
  - (4) Contact information for the provider employee from whom additional information can be obtained with respect to the person's transition to new residential services;
  - (5) Information regarding the transition process; and
  - (6) Information regarding the person's rights as it relates to the discontinuation of services.

993.10 Each person providing supported living services for a person shall meet all of the requirements in Chapter 19 to Title 29 DCMR, section 1911 in addition to the requirements set forth below:

- (a) Complete competency based training in emergency procedures; and
- (b) Be certified annually in cardiopulmonary resuscitation and First Aid.

993.11 Each provider shall cooperate with the DDS service coordination in providing access and information as requested for case management visits and reviews.

993.12 Each provider of supported living services shall review the person's IHP or ISP and Plan of Care goals, objectives, and activities at least quarterly and more often, as necessary. The provider shall propose modifications to the IHP or ISP and Plan of Care, as appropriate. The results of these reviews shall be submitted to the case manager within thirty (30) days of the end of each quarter. Each provider shall participate in IHP or ISP and Plan of Care development so that community integration goals are clearly defined. Each

provider shall also assist in the coordination of all services that a person may receive.

- 993.13 Each provider of supported living services shall maintain progress notes on a weekly basis, or more frequently if indicated, on the IHP or ISP and Plan of Care, participant attendance rosters on a daily basis, and maintain current financial records of expenditures of public and private funds for each person. The progress notes shall include at a minimum documentation that demonstrates:
- (a) Progress in meeting each goal in the ISP assigned to the supported living services provider;
  - (b) A list of all community activities the person participates in and the person's response to each activity;
  - (c) Any unusual health events, side effects to medication, change in health status, behavioral event, use of a restrictive procedure or unusual incident; and
  - (d) Each visitor the person receives, special events, and any situation or event requiring follow-up.
- 993.14 Each provider of supported living services shall maintain all records and reports for at least six (6) years after the person's date of discharge.
- 993.15 Supported living services shall not be reimbursed when provided by a member of the person's family.
- 993.16 Reimbursement for supported living services under the Waiver shall not include:
- (a) Cost of room and board;
  - (b) Cost of facility maintenance, upkeep and improvement, modifications or adaptations to a home to meet the requirements of the applicable life safety code; or
  - (c) Activities for which payment is made by a source other than Medicaid.
- 993.17 The reimbursement rate for supported living services shall include:
- (a) All direct support staff and supervision of support staff;
  - (b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, and maintenance of Health Management Care Plan;
  - (c) Programmatic supplies and indirect expenses; and,
  - (d) General and administrative fees for waiver services.

The billable unit of service for supported living services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.

993.18 The reimbursement rate for supported living services shall be as follows:

- (a) The Basic Support Level 1 staff asleep overnight daily rate for a SLR with three (3) residents the rate shall be one hundred and ninety-five dollars (\$195.00) for a direct care staff support ratio of 1:3 during all hours when residents are in the home billable in quarter hour units of two dollars and three cents (\$2.03) per unit;
- (b) The Basic Support Level 2 staff awake overnight daily rate for a SLR with three (3) residents shall be two hundred forty dollars (\$240.00) for a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours when residents are in the home billable in quarter hour units of two dollars and fifty cents (\$2.50) per unit;
- (c) The Moderate Support Level 1 staff asleep overnight daily rate for a SLR with three (3) residents shall be two hundred eighty-six dollars (\$286.00) for a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage when residents are in the home billable in quarter hour units of two dollars and ninety-eight cents (\$2.98) per unit;
- (d) The Moderate Support Level 2 staff awake overnight daily rate for a SLR with three (3) residents shall be three hundred thirty dollars (\$330.00) for a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage when residents are in the home billable in quarter hour units of three dollars and forty-four cents (\$3.44) per unit;
- (e) The Intensive Support Level 1 daily rate for a SLR with three (3) residents shall be three hundred fifty-nine dollars (\$359.00) for a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when residents are in the home and adjusted for increased absenteeism billable in quarter hour units of three dollars and seventy-four cents (\$3.74) per unit;
- (f) The Intensive Support Level 2 daily rate for a SLR with three (3) residents shall be four hundred fifty dollars (\$450.00) for a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when residents are in the home and adjusted for increased absenteeism billable in quarter hour units of four dollars and sixty-nine cents (\$4.69) per unit;
- (g) The Basic Support Level 1 staff asleep overnight daily rate for a SLR with two (2) residents shall be two hundred sixty-two dollars (\$262.00) for a direct care staff support ratio of 1:2 staff asleep overnight coverage and 1:2 staff awake coverage during all hours



- when residents are in the home billable in quarter hour units of two dollars and seventy-three cents (\$2.73) per unit;
- (h) The Basic Support Level 2 staff awake overnight daily rate for a SLR with two (2) residents shall be three hundred twenty-two dollars (\$322.00) for a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when residents are in the home billable in quarter hour units of three dollars and thirty five cents (\$3.35) per unit;
  - (i) The Moderate Support Level 1 staff awake overnight daily rate for a SLR with two (2) residents shall be three hundred eighty-three dollars (\$383.00) for a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage when residents are in the home billable in quarter hour units of three dollars and ninety-nine cents (\$3.99) per unit;
  - (j) The Moderate Support Level 2 daily rate in a SLR with two (2) residents shall be four hundred forty-four dollars (\$444.00) for a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are in the home and adjusted for increased absenteeism billable in quarter hour units of four dollars and sixty-three cents (\$4.63) per unit;
  - (k) The Intensive Support Level 3 daily rate in a SLR with two (2) residents shall be four hundred eighty-two dollars (\$482.00) for a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and two cents (\$5.02) per unit;
  - (l) The hourly rate for periodic supported living services shall be twenty-two dollars (\$22.00) per hour billable in quarter hour units of five dollars and fifty cents (\$5.50) per unit; and
  - (m) There shall be a specialized service rate determined through a negotiated request for proposals process when determined necessary by DDS to serve individuals with extraordinary medical and/or behavioral health needs.

993.19 Individualized twenty-four (24) hour one-to-one supervision shall only be permitted with prior annual approval of the DDS Human Rights Committee or a medical treatment plan signed by the person's physician. To be eligible for reimbursement for one-to-one supported living services, the person shall be required to have a behavior support plan and meet at least one of the characteristics set out in section 979.12 for paraprofessional one-to-one services or at least one of the characteristics set out in section 979.13 for professional one-to-one services. For purpose of this section 993.19, in addition to the requirements for paraprofessional one-to-one services and professional one-to-one services as set out in section 979.99, supported living one-to-one services means services provided to one person exclusively by a

supported living services provider who has been trained in all general requirements and possesses all training required to implement the person's specific behavioral and/or clinical protocols and support plans for a pre-authorized length of time. One-to-one supported living services shall be reimbursed at the daily rate of four hundred and ninety-five dollars (\$495.00) for one-to-one services with awake overnight staff, billable in quarter hour units of five dollars and sixteen cents (\$5.16) per unit. One-to-one supported living services with asleep overnight staff or for any additional people in the same house with another person receiving one-to-one services shall be reimbursed at the daily rate of four hundred three dollars (\$403.00), billable in quarter hour units of four dollars and twenty cents (\$4.20) per unit. The rate adjustment for multiple people in the same house receiving one-to-one services avoids duplication of administrative and management fees.

- 993.20 Acuity shall be determined by a review of each person's IHP or ISP or Plan of Care. Participants shall be designated with a support level that is consistent with their current staffing level if other acuity indicators are not yet in place. Any request(s) to increase or decrease staffing ratios shall be reviewed and adjudicated by a committee appointed by the Director of DDS that shall review current staffing levels, available health and behavioral records, and any available standardized acuity instrument results to determine if a person has a health or behavioral acuity that requires modified supports.
- 993.21 Long-term twenty-four (24) hour paid support single-person placements in a SLR are only permitted for a person having a history of challenging behaviors that may put others at risk and requires intensive supports as determined by a psychological assessment or pursuant to a court order. The psychological assessment shall be updated on an annual basis to determine the continued necessity for this single, twenty-four (24) hour placement.
- 993.22 Each provider of supported living services shall coordinate the delivery of necessary behavioral support services, and skilled nursing services from approved Waiver providers of those services based on the requirements of the IHP or ISP and Plan of Care.
- 993.23 Supported living services shall not be billed concurrently with the following Waiver services:
- (a) Residential Habilitation;
  - (b) Respite;
  - (c) Host Home;
  - (d) Live-in Caregiver; and
  - (e) In-Home Supports.
- 993.24 Supported living services shall not be billed when the person is hospitalized, on vacation, or for any other period in which the person is not residing at the

SLR. The reimbursement rates assume a ninety-three (93) percent annual occupancy, and unanticipated absence from day/vocational services or employment due to illness, and planned absence for holidays. Daily activities such as day treatment, day habilitation services, prevocational services, supported employment services, or employment are typically scheduled for five (5) hours per day five (5) days per week, and scheduling day activities in excess of five (5) hours per day five (5) days per week shall result in an hour-for-hour decrease in the supported living services reimbursement.

Reimbursement shall be calculated based on the time the person is scheduled to be in their place of residence, except the provider may include the time that the individual is being transported by the provider to day programs, employment, professional appointments, community outings and events.

- 993.25 Direct care staff shall be dressed, alert and maintain support logs during the entire shift of awake hours. The provider shall maintain a log of scheduled activities that specifies when the person is scheduled to be in their home on a daily basis.

#### 993.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

**Awake** – For purposes of staffing and determining the reimbursement rates for supported living services, awake hours of the day with absence from day program, weekend, or holiday shall be approximately 6:00 a.m. to 10:00 p.m., and for purposes of awake hours for all other days shall be approximately 6:00 am to 10:00 a.m. and 2:00 p.m. to 10:00 p.m.

**Community Integration** – Participation in events outside of the person's place of residence that may include shopping, dining, attending movies, plays, and other social events. The plan from section 993.12 should identify community and social events appropriate for the person.

**Direct Care Staff** – Individuals employed to work in a SLR who render the day-to-day, personal assistance that person requires in order to meet the goals of his or her IHP or ISP and Plan of Care.

**Family** – Any person who is related to the person receiving services by blood, marriage or adoption.

**Individual Habilitation Plan (IHP)** – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

**Individual Support Plan (ISP)** – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

**Interdisciplinary Team** – A group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons who have the responsibility of performing a comprehensive person evaluation while participating in the development, implementation, and monitoring of the person's IHP or ISP and Plan of Care.

**Overnight** – For purposes of staffing and the reimbursement rates for supported living services, the overnight period shall be approximately from 10:00 p.m. to 6:00 a.m.

**Person or Participant** – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

**Plan of Care** – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

**Progress Notes** – Notes that observe (1) progress in meeting each goal in the IHP or ISP and Plan of Care, which is the responsibility of the residence; (2) the list of community activities for the week and the participant's response to each activity; (3) any unusual health events; (4) any visitors the participant received; and (5) anything requiring follow-up or action.

**Provider** – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

**Supported Living Residence (SLR)** - A community residence or home, other than an intermediate care facility for persons with mental retardation, which provides a homelike environment for not more than three (3) related or unrelated persons who require specialized living arrangements and maintains necessary staff, programs, support services, and equipment for their care and habilitation.

**Waiver** – Shall mean the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, DC 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

**CHIEF, METROPOLITAN POLICE DEPARTMENT****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Chief of the Metropolitan Police Department, pursuant to her duties to interpret, implement and enforce the Firearms Regulations Control Act of 1975 (Act), effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2501 *et seq.*)(2001), the Firearms Control Emergency Amendment Act of 2008, effective July 16, 2008 (D.C. Act 17-422; 55 DCR 008177) and any substantially similar temporary or permanent acts, hereby gives notice of the adoption on an emergency basis of an amendment to Chapter 23 (Guns and Other Weapons) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR). The rulemaking amends subsection 2300.3, adds new sections 2320 and 2321 - Procedures and Requirements for Registration of a Pistol for the Purpose of Self-Defense Within Applicant's Home and Qualifications and Procedures to Obtain a Firearms Dealer's License - and adds definitions to section 2399.

Emergency rulemaking action is necessary to implement the provisions of the Firearms Control Emergency Amendment Act of 2008, effective July 16, 2008 (D.C. Act 17-422; 55 DCR 008177), which will amend the District's laws after a recent United States Supreme Court determination that the Act's prohibition on the registration of handguns violates an individual's constitutional right to keep and bear arms for self-defense in the home. Emergency rulemaking will immediately set the qualifications and procedures for registering such firearms and for obtaining a license to sell such firearms. Immediate action is required to bring the District into compliance with the Supreme Court's decision and mandate.

This emergency rulemaking was adopted on July 16, 2008, and became effective immediately. The emergency rulemaking will expire on November 13, 2008, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Chief also gives notice of her intent to take final rulemaking action to adopt the proposed rulemaking in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

**Section 2300.3 of Chapter 23 of Title 24 DCMR is amended to read as follows:**

2300.3        This section shall not apply to the discharge of firearms or explosives in a performance conducted in or at a regular licensed theater or show, or to a discharge of a registered firearm while it is being used to protect against a reasonably perceived threat of immediate harm to a person in the registrant's home.

**Chapter 23 of Title 24 DCMR is amended to add sections 2320, 2321, and 2322 to read as follows:**

**2320 PROCEDURES AND REQUIREMENTS FOR REGISTRATION OF  
A PISTOL FOR THE PURPOSE OF SELF-DEFENSE WITHIN  
APPLICANT'S HOME**

2320.1 In addition to satisfying all other firearms registration requirements in Chapter 23 of this Title, an applicant for a registration certificate for a pistol to be used for the purpose of self-defense within that person's home shall comply with all the procedures and requirements of this section. In the event of any irreconcilable conflict between this section and any other regulations regarding the registration of a pistol, this section controls.

2320.2 The Director may register any pistol of any caliber or shot capacity so long as the pistol is not a machine gun as that term is defined in section 101(10) of the Firearms Control Act of 1975 (D.C. Law 1-85; D.C. Official Code § 7-2501.01(10)).

2320.3 An applicant seeking to register a pistol he or she will purchase from a firearms dealer pursuant to this section shall:

- (a) Acquire the Firearm Registration application (PD 219) either in person at the Firearms Registration Section at Metropolitan Police Department (MPD) headquarters or by mailing a request with a self-addressed, stamped envelope to Firearms Registration Section, Metropolitan Police Department, 300 Indiana Avenue, NW, Washington, DC 20001;
- (b) Present the Firearm Registration application to a licensed firearm dealer, whose assistance is necessary to complete the application;
- (c) Appear in person at MPD headquarters to take these steps:
  - (1) Report to the Firearms Registration Section with the completed Firearm Registration application, acquire two fingerprint cards, and provide the following:
    - (A) Two passport-sized facial photos;
    - (B) A valid driver's license or a letter from a physician attesting that the applicant has vision as least as good as that required for a driver's license; and
    - (C) Residency verification, such as a District of Columbia driver's license or identification card, a current rental agreement, or a deed to property that includes a home;

- (2) Complete a Firearm Registration test with at least a 75% proficiency;
  - (3) If successful on the test, pay all applicable and reasonable fees required by the Chief at the MPD cashier, including thirty five dollars (\$35) for fingerprinting and thirteen dollars (\$13) for a firearm registration;
  - (4) Present a fee receipt and the two fingerprint cards to the MPD fingerprint examiner, and submit to fingerprinting; and
  - (5) Return to the Firearms Registration Section with one fingerprint card for the office file and the other for submission to the Federal Bureau of Investigation (FBI) for fingerprint analysis for the purpose of a criminal record check;
- (d) Await notification by mail to the address on the Firearm Registration application of whether all statutory and regulatory requirements for registration have been satisfied;
  - (e) Upon notification that all statutory and regulatory requirements for registration have been satisfied, return to the Firearms Registration Section to complete the registration process and obtain an MPD seal on the completed Firearms Registration certificate;
  - (f) Present the sealed Firearm Registration application to the licensed firearms dealer and take delivery of the applicant's pistol pending completion of a ballistic identification procedure, or, in the case of a purchase from a firearms dealer located in another jurisdiction, have that firearms dealer transport the applicant's pistol to a licensed firearms dealer in the District, where the applicant will take delivery of the pistol pending completion of a ballistic identification procedure;
  - (g) Transport the pistol to the Firearms Registration Section for completion of a ballistic identification procedure between the hours of 9:00 AM through 5:00 PM, Monday through Friday, pay a ballistic identification fee of twelve dollars (\$12); and
  - (h) Retrieve the registered pistol from the Firearms Registration Section and transport it to the applicant's home.



- 2320.4 For a period of six months after the effective date of this section, an applicant seeking to register an unregistered pistol already in his or her possession pursuant to this section shall follow the procedure laid out in paragraphs (g), (a), (c), (d), (e), and (h) of section 2320.3, in that order.
- 2320.5 An applicant seeking to register a pistol legally possessed in another jurisdiction pursuant to this section shall follow the procedure laid out in paragraphs (g), (a), (c), (d), (e), and (h) of section 2320.3, in that order. If the applicant does not transport the pistol immediately to the Firearms Registration Section upon bringing it into the District, the applicant shall contact the Firearms Registration Section by calling 202-727-4275, providing notification that a pistol from another jurisdiction has been brought into the District, and then begin the application process within 48 hours of such notification.
- 2320.6 Failure to comply with the requirement to bring the pistol for a ballistics identification procedure will result in the denial of the registration application or revocation of the registration for that pistol and may subject the owner of the pistol to possible criminal charges.
- 2320.7 In the event of the loss, theft, or destruction of the registration certificate or of a registered pistol, a registrant shall immediately file a police report and shall also:
- (a) Immediately notify the Firearms Registration Section in writing of the loss, theft, or destruction of the registration certificate or of the registered pistol (including the circumstances, if known) upon discovery of such loss, theft, or destruction; and
  - (b) Immediately return to the Firearms Registration Section the registration certificate for any firearm which is lost, stolen, or destroyed.
- 2320.8 When permitted under this section to transport a pistol between two places, a registrant must go directly between those places without deviation. When the transport is within the District, the pistol shall be transported unloaded and securely wrapped in a package, with the package carried in open view. When the transport is from another state into the District, transport should be in accordance with 18 U.S.C. § 926a.
- 2321 QUALIFICATIONS AND PROCEDURES TO OBTAIN A FIREARMS DEALER'S LICENSE**
- 2321.1 A person is eligible to become a licensed dealer of firearms if that person:
- (a) Is eligible to register a firearm under this Chapter;

- (b) Is eligible under federal law to engage in such business; and
  - (c) Has not previously violated any statutory duty of a licensed dealer if that person earlier was a licensed dealer.
- 2321.2 The license issued to a firearms dealer shall be valid for a period of not more than one year from the date of issuance.
- 2321.3 To deal firearms lawfully, the holder of a firearms dealer's license must also comply with any other license or zoning procedures required by law, including having a certificate of occupancy and a basic business license in accordance with applicable provisions in the District of Columbia Municipal Regulations.
- 2321.4 Prior to applying to the Firearms Registration Section for a firearm dealer's license, an applicant must first obtain a Federal Firearms Dealer's License issued by the Bureau of Alcohol, Tobacco, and Firearms.
- 2321.5 Each application for a dealer's license and renewal shall be made on a form prescribed by the Chief, shall be sworn to or affirmed by the applicant, and shall contain:
  - (a) All information required by section 203 of the Firearms Control Act of 1975 (D.C. Law 1-85; D.C. Official Code § 7-2502.03);
  - (b) The address where the applicant conducts or intends to conduct his/her business;
  - (c) Whether the applicant, prior to September 24, 1976, held a license to deal in deadly weapons in the District; and
  - (d) Such other information as the Chief may require including, but not limited to, fingerprints and photographs of the applicant.

**Section 2399 of Chapter 23 of Title 24 DCMR is amended to read as follows:**

**2399 DEFINITIONS**

- 2399.1 When used in this chapter, and in forms prescribed under this chapter, where not otherwise distinctly expressed or manifestly incompatible with the intent of the Act or this chapter, the following terms shall have the meanings ascribed:

**Ballistics identification procedure** – a process, approved by the Chief, undertaken to identify markings unique to a particular firearm or the ammunition used by the firearm.

**Business premises** - the property on which a licensed, deadly weapons dealer's business is or will be conducted.

**Chief** - the Chief of the Metropolitan Police Department.

**Dealer** - any person engaged in the business of buying, selling, or otherwise dealing in firearms, ammunition, or destructive devices at wholesale or retail; any person engaged in the business of repairing, testing, or analyzing firearms; any person engaged in the business of making or fitting special barrels, stocks, or trigger mechanisms for firearms or destructive devices; or any person repairing, testing, analyzing, or making any destructive device or ammunition.

**Director** - the commanding officer or acting commanding officer of the Police Business Services Division of the Metropolitan Police Department or their delegates.

**Explosive or explosives** - any chemical compound or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportion, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator, or any part of the compound or mixture, may cause a sudden generation of highly heated gasses that results in gaseous pressures capable of producing destructive effects on contiguous objects or of destroying life or limb. (Art. 9, § 3 of the Police Regulations)

**Firearms Registration Section** - a part of the Police Business Services Division of the Metropolitan Police Department, located in 300 Indiana Avenue, N.W., Washington, D.C. 20001

**Home** - the principal place of residence of an individual in the District and limited to the interior of a house, condominium unit, cooperative unit, apartment, houseboat, or a mobile home, so long as that structure is not capable of unassisted movement. The term home does not include any common areas of any condominium unit, cooperative unit, or apartment.

**Law enforcement officer** - any person authorized by a unit of government to carry a firearm on public space and who is responsible for, and under a duty to, detect crimes and apprehend offenders. A law enforcement officer is not a commissioned special police officer or the equivalent.

**Licensed dealer** - a deadly weapons dealer licensed under the Act and this chapter.

**Pistol** - any firearm originally designed to be fired by use of a single hand.

**Supervisor** - the person in charge of the Firearms Registration Section.

All persons interested in commenting on the subject matter of this proposed rulemaking action may file comments, in writing, with: Terrence D. Ryan, General Counsel,

Metropolitan Police Department, Suite 4125, 300 Indiana Avenue, N.W., Washington, D.C. 20001. Comments must be received no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of this proposal may be obtained, at cost, by writing to the above address.

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., SUITE 200, WEST TOWER  
WASHINGTON, DC 20005**

**NOTICE OF EMERGENCY RULEMAKING**

**FORMAL CASE NO. 1002, IN THE MATTER OF THE JOINT APPLICATION OF  
PEPCO AND THE NEW RC, INC. FOR AUTHORIZATION AND APPROVAL OF  
MERGER TRANSACTION**

1. This Emergency Rulemaking will become effective immediately and will remain in effect for 120 days or until a Notice of Final Rulemaking is published in the D.C. Register.<sup>1</sup> A Notice of Final Rulemaking is expected to be published in the D.C. Register on Friday, July 18, 2008.

2. On May 9, 2008, the Potomac Electric Power Company ("Pepco" or "Company") filed a Revised Tariff Application<sup>2</sup> on behalf of the Smart Meter Pilot Program ("SMPPI").<sup>3</sup> In its Revised Tariff Application, Pepco/SMPPI proposes to correct page R-44-2 of the PowerCentsDC Project Rider by changing the LMP price factor for the HP-AE rate from 127.27% to 127.75%.<sup>4</sup>

3. Accordingly, Pepco/SMPPI seeks authority to revise the following tariff page:

**POTOMAC ELECTRIC POWER COMPANY, P.S.C. of D.C. No. 1**

**3<sup>rd</sup> Revised Page No. R-44.2**

4. A copy of Pepco/SMPPI's rate schedules may be obtained by contacting Dorothy Wideman, Commission Secretary, Office of the Commission Secretary at 1333 H Street, N.W, 2<sup>nd</sup> Floor, West Tower, Washington, D.C. 20005 or from the Commission's website at [www.dcpssc.org](http://www.dcpssc.org).

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<sup>1</sup> D.C. Official Code, § 2-505 (c) (2001 Ed.).

<sup>2</sup> *Formal Case No. 1002, In the Matter of the Joint Application of Pepco and the New RC, Inc. for Authorization and Approval of Merger Transaction ("F.C. 1002")*, SMPPI Revised Tariff, filed May 9, 2008 ("Revised Tariff Application").

<sup>3</sup> *F.C. 1002*, Revised Tariff Application. SMPPI is comprised of the following entities: Pepco; District of Columbia Office of the People's Counsel ("OPC"); District of Columbia Consumer Utility Board ("CUB"); International Brotherhood of Electrical Workers Local 1900 ("IBEW"); and the Commission. The SMPPI program, operating under the name PowerCentsDC™, is a pilot program to test the concept of different types of time-based rates in assisting residential customers in the District of Columbia to better manage their electricity bill.

<sup>4</sup> *F.C. 1002*, Revised Tariff Application.

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
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2. On April 25, 2008, Potomac Electric Power Company ("Pepco" or "Company") filed a Corrected Smart Meter Revised Tariff Application<sup>2</sup> on behalf of the District of Columbia Smart Meter Pilot Program, Inc.'s ("SMPPI")<sup>3</sup> proposing revisions to the pricing options contained in its Smart Meter Pilot Residential Tariff.<sup>4</sup> Specifically, the Pepco/SMPPI seeks to revise its pricing options so that the average residential customer will not pay more on the program pricing plans (critical peak pricing, critical rebate pricing, and hourly pricing) than the average residential customer on the standard offer service (SOS) pricing plan.<sup>5</sup>

3. Accordingly, Pepco/SMPPI seeks authority to revise the following tariff pages:

**POTOMAC ELECTRIC POWER COMPANY, P.S.C. of D.C. No. 1**

**39<sup>th</sup> Revised Page No. R-1**

**39<sup>th</sup> Revised Page No. R-2**

**32<sup>nd</sup> Revised Page No. R-2.1**

**8<sup>th</sup> Revised Page No. 2.2**

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<sup>1</sup> D.C. Official Code, § 2-505 (c) (2001 Ed.).

<sup>2</sup> *Formal Case No. 1002, In the Matter of the Joint Application of Pepco and the New RC, Inc. for Authorization and Approval of Merger Transaction ("F.C. 1002")*, Application of the Potomac Electric Power Company on Behalf of the Smart Meter Pilot Program, Inc. Revised Tariff Substitute, filed April 25, 2008 ("Corrected Smart Meter Revised Tariff Application").

<sup>3</sup> SMPPI is comprised of the following entities: Pepco; District of Columbia Office of the People's Counsel ("OPC"); District of Columbia Consumer Utility Board ("CUB"); International Brotherhood of Electrical Workers Local 1900 ("IBEW"); and the Commission. The SMPPI program, operating under the name PowerCentsDC™, is a pilot program to test the concept of different types of time-based rates in assisting residential customers in the District of Columbia to better manage their electricity bill.

<sup>4</sup> *F.C. 1002, Corrected Smart Meter Revised Tariff Application.*

<sup>5</sup> *Id.*

**3<sup>rd</sup> Revised Page No. R-44**

**3<sup>rd</sup> Revised Page No. R-44.1**

**3<sup>rd</sup> Revised Page No. R-44.3**

**3<sup>rd</sup> Revised Page No. R-44.4**

**3<sup>rd</sup> Revised Page No. R-44.5**

**3<sup>rd</sup> Revised Page No. R-44.6**

4. A copy of Pepco/SMPPI's rate schedules may be obtained by contacting Dorothy Wideman, Commission Secretary, Office of the Commission Secretary at 1333 H Street, N.W, 2<sup>nd</sup> Floor, West Tower, Washington, D.C. 20005 or from the Commission's website at [www.dcpssc.org](http://www.dcpssc.org).